

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court WD/TX, Austin Division on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 1:10-cv-313	DATE FILED May 10, 2010	U.S. DISTRICT COURT Western District of Texas, Austin Division
PLAINTIFF DDB Technologies, L.L.C.		DEFENDANT AOL Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,526,479		
2 5,671,347		
3 6,204,862		
4 7,373,587		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK William G. Putnicki	(BY) DEPUTY CLERK <i>Katherine Wallace</i>	DATE May 11, 2010
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

45. AOL's infringing activities have damaged and continue to damage DDB. Upon information and belief, AOL will continue to infringe the '587 Patent, causing irreparable harm to DDB unless enjoined by this Court.

REQUEST FOR JURY TRIAL

46. Pursuant to FED. R. CIV. P. 38, DDB demands a trial by jury of any issue triable of right by a jury.

PRAYER FOR RELIEF

THEREFORE, plaintiff DDB prays for relief against AOL as follows:

A. That the DDB Patents be adjudged infringed by AOL and that the infringement be held to be willful;

B. That DDB be awarded compensatory damages for past infringement of the DDB Patents by AOL in an amount no less than a reasonable royalty, in a sum to be determined at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;

C. That AOL, its officers, agents, servants, employees and attorneys, and other persons in active concert or participation with AOL be preliminarily and permanently enjoined from further infringement of the DDB Patents;

D. That AOL be ordered to deliver to DDB for destruction all infringing products and systems in its possession;

E. That this case be declared an exceptional case under 35 U.S.C. § 285 as to AOL, and that DDB be awarded its attorneys' fees incurred in this action.

Respectfully Submitted,

May 10, 2010

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fanhouse.com), which is available to, accessed by, and subscribed to by users, customers, and potential customers of AOL within this judicial district.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over AOL pursuant to Tex. Civ. Prac. & Rem. Code § 17.041 *et seq.* Personal jurisdiction generally exists over AOL because AOL has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this district. Personal jurisdiction also exists because, on information and belief, AOL has entered into numerous contracts with customers in Texas for products and services offered by AOL, which products and services include, among other things, the knowing and repeated transmission of computer files over the Internet. This Court's jurisdiction over AOL comports with the constitutional standards of fair play and substantial justice and arises directly from AOL's purposeful minimum contacts with the State of Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

6. AOL has designated an agent for service of process in this State, Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

THE PATENTS-IN-SUIT

7. On June 11, 1996, United States Patent No. 5,526,479 (“the ‘479 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘479 Patent is attached hereto as Exhibit A.

8. On September 23, 1997, United States Patent No. 5,671,347 (“the ‘347 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘347 Patent is attached hereto as Exhibit B.

9. On March 20, 2001, United States Patent No. 6,204,862 (“the ‘862 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘862 Patent is attached hereto as Exhibit C.

10. On May 13, 2008, United States Patent No. 7,373,587 (“the ‘587 Patent”), entitled “Representing Sub-Events With Physical Exertion Actions,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘587 Patent is attached hereto as Exhibit D.

11. The ‘479, ‘347, ‘862, and ‘587 Patents are referred to collectively hereinafter as “the DDB Patents.”

12. David R. Barstow and Daniel W. Barstow assigned the DDB Patents to DDB. DDB owns all right, title and interest in and to the DDB Patents.

FACTS

13. In the 1980s and continuing through the early 1990s, Dr. David R. Barstow, a Partner in and President of DDB, along with his brother, Daniel W. Barstow, a Partner in DDB, developed a method and apparatus for providing to remote viewers simulations of live sporting events including, for example, baseball, football, and basketball games, etc. All of the technology required to produce such simulations is embodied in the DDB Patents.

14. In the 2000 to 2003 timeframe, representatives of DDB had communications with representatives of AOL, and one or more of the DDB Patents were specifically mentioned in those communications. During this timeframe, DDB offered AOL terms for a non-exclusive license to the technology covered by the DDB Patents. In this timeframe, representatives of DDB had face-to-face meetings with representatives of AOL in Virginia and Georgia, and again one or more of the DDB patents were discussed. After these meetings, there were additional communications between representatives of DDB and AOL. In late 2003, AOL informed DDB that it was not interested in pursuing a license to the DDB Patents.

15. AOL has known of the technology embodied in the DDB Patents continuously since at least 2000. In particular, AOL has known of one or more of the DDB patents since at least as early 2000, including, for example, the '479 Patent and the '347 Patent.

16. Without DDB's permission, AOL began providing simulation products/services over the Internet that embody the invention(s) set forth in the DDB patents. For example, AOL's "ScoreCast" product/service permits remote users to watch a simulation of live sporting events including, for example, football games. *See, e.g.,* Exhibit E.

17. AOL has been and still is infringing the DDB Patents by making, selling, offering for sale, and using products and/or services embodying the invention(s) set forth in the DDB Patents including, without limitation, AOL's "ScoreCast" product/service available through AOL's fanhouse.com web site, and by inducing and/or contributing to the infringement of the DDB Patents by others.

**COUNT I:
INFRINGEMENT OF THE '479 PATENT**

18. DDB repeats and realleges each of the allegations of paragraphs 1-17 as if set forth in full.

19. AOL has infringed and continues to infringe the '479 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '479 Patent (including, for example, AOL's live game simulation product/service "ScoreCast"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

20. AOL has promoted in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.,* Exhibit F.

21. AOL's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

22. AOL's actions have constituted and continue to constitute active inducement of and contributory infringement of the '479 patent.

23. On information and belief, AOL had actual notice of the existence of the '479 Patent, and despite such notice, has continued to engage in acts of infringement of the '479 Patent. AOL's continued acts of infringement have been, and will continue to be, wanton and willful.

24. AOL's infringing activities have damaged and continue to damage DDB. Upon information and belief, AOL will continue to infringe the '479 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT II
INFRINGEMENT OF THE '347 PATENT**

25. DDB repeats and realleges each of the allegations of paragraphs 1-24 as if set forth in full.

26. AOL has infringed and continues to infringe the '347 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '347 Patent, (including, for example, AOL's live game simulation product/service "ScoreCast"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

27. AOL has promoted in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.,* Exhibit F.

28. AOL's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

29. AOL's actions have constituted and continue to constitute active inducement of and contributory infringement of the '347 patent.

30. On information and belief, AOL had actual notice of the existence of the '347 Patent, and despite such notice, has continued to engage in acts of infringement of the '347 Patent. AOL's continued acts of infringement have been, and will continue to be, wanton and willful.

31. AOL's infringing activities have damaged and continue to damage DDB. Upon information and belief, AOL will continue to infringe the '347 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT III
INFRINGEMENT OF THE '862 PATENT**

32. DDB repeats and realleges each of the allegations of paragraphs 1-31 as if set forth in full.

33. AOL has infringed and continues to infringe the '862 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '862 Patent (including, for example, AOL's live game simulation product/service "ScoreCast"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

34. AOL has promoted in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

35. AOL's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

36. AOL's actions have constituted and continue to constitute active inducement of and contributory infringement of the '862 patent.

37. On information and belief, AOL had actual notice of the existence of the '862 Patent, and despite such notice, has continued to engage in acts of infringement of the '862 Patent. AOL's continued acts of infringement have been, and will continue to be, wanton and willful.

38. AOL's infringing activities have damaged and continue to damage DDB. Upon information and belief, AOL will continue to infringe the '862 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT IV
INFRINGEMENT OF THE '587 PATENT**

39. DDB repeats and realleges each of the allegations of paragraphs 1-38 as if set forth in full.

40. AOL has infringed and continues to infringe the '587 Patent by making, selling, offering for sale, and using products/services covered by claims of the '587 Patent, (including, for example, AOL's live game simulation product/service "ScoreCast"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

41. AOL has promoted in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

42. AOL's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

43. AOL's actions have constituted and continue to constitute active inducement of and contributory infringement of the '587 patent.

44. On information and belief, AOL had actual notice of the existence of the '587 Patent, and despite such notice, has continued to engage in acts of infringement of the '587 Patent. AOL's continued acts of infringement have been, and will continue to be, wanton and willful.